

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

THE ESTATE OF EZEQUIEL CASTRO  
RIVERA, et al.,

Plaintiffs,

v.

FERNANDO FAGUNDO, et al.,

Defendants;

THE PUERTO RICO HIGHWAY AND  
TRANSPORTATION AUTHORITY,

Defendant and Third-Party  
Plaintiff,

v.

L.P.C.&D. INC. and AMERICAN  
INTERNATIONAL INSURANCE  
COMPANY OF PUERTO RICO, INC.,

Third-Party Defendants.

Civil No. 04-2324 (JAF)

**O R D E R**

Plaintiffs, Aurora Adames, Ida L. Castro, the estate of Ezequiel Castro Rivera, and Ramón E. Castro, filed the present action against Defendants, Fernando Fagundo, Héctor López, the Puerto Rico Highway and Transportation Authority ("PRHTA"), and unnamed persons and insurance companies, alleging violations under 42 U.S.C. § 1983 (2003 & Supp. 2004) and various state laws. Docket Document No. 1. Defendants Fernando Fagundo, Héctor López,

Civil No. 04-2324 (JAF)

-2-

1 and PRHTA moved to dismiss on various grounds. Docket Document  
2 Nos. 27, 30, 33. On April 20, 2005, we dismissed all claims  
3 against all Defendants. Docket Document No. 62. We found, inter  
4 alia, that Plaintiff's claims against Defendants Fernando Fagundo  
5 and PRHTA "[were] sufficiently similar to [Plaintiff's previous  
6 federal actions] to support a finding of res judicata." Docket  
7 Document No. 62. On the basis of our decision, Defendant PRHTA  
8 moves for attorney's fees pursuant to Rule 54(d) of the Federal  
9 Rules of Civil Procedure and Local Civil Rule 54. Docket Document  
10 No. 64.

11 In the absence of legislation providing otherwise, litigants  
12 in the United States must generally pay their own attorney's fees.  
13 Christiansburg Garment Co. v. EEOC, 434 U.S. 412, 415 (1978).  
14 Under 42 U.S.C. § 1988, the court may, in its discretion, award  
15 attorney's fees to prevailing parties in civil rights actions. 42  
16 U.S.C. § 1988 (2003 & Supp. 2004); see Tang v. State of R.I., Dep't  
17 of Elderly Affairs, 163 F.3d 7, 13 (1st Cir. 1998). In civil  
18 rights cases, "fee-shifting in favor of a prevailing plaintiff is  
19 the rule, whereas fee-shifting in favor of a prevailing defendant  
20 is the exception. Thus . . . a prevailing defendant is entitled to  
21 [an attorney's fee] only if she can establish that the plaintiffs'  
22 suit was totally unfounded, frivolous, or otherwise unreasonable."  
23 Casa Marie Hogar Geriatrico, Inc. v. Rivera-Santos, 38 F.3d 615,  
24 618 (1st Cir. 1994) (citations omitted) (applying standard set

Civil No. 04-2324 (JAF)

-3-

1     forth in Christiansburg, 434 U.S. at 421). Accordingly,  
2     "[D]ecisions to grant defendants their fees are, and should be,  
3     rare." Tang, 163 F.3d at 13.

4             The standard for awarding attorney's fees to a prevailing  
5     defendant is even more stringent when a pro-se plaintiff is  
6     involved. See Hughes v. Rowe, 449 U.S. 5, 15-16 (1980); Miller v.  
7     Los Angeles County Bd. of Educ., 827 F.2d 617, 620 (9th Cir. 1987)  
8     ("The Christiansburg standard is applied with particular strictness  
9     in cases where the plaintiff proceeds pro se."). Where a pro-se  
10    plaintiff has lost, "[c]ourts should consider a pro se plaintiff's  
11    ability to recognize the objective merit of his claims before  
12    awarding fees to a successful defendant." Greenier v. Pace, Local  
13    No. 1188, 245 F. Supp. 2d 247, 250 (D. Me. 2003). "[A] pro se  
14    plaintiff may be held accountable for her actions only where  
15    plaintiff knows a claim is groundless." Id. (citing Miller, 827  
16    F.2d at 620). Furthermore, a district court "retains discretion to  
17    deny or reduce fee requests after considering the nuances of a  
18    particular case." Tang, 163 F.3d at 15; see also Adkins v. Briggs  
19    & Stratton Corp., 159 F.3d 306, 307 (7th Cir. 1998) (holding that  
20    a court is not required to award attorney's fees to a defendant,  
21    and even though attorney's fees may be appropriate, they are not  
22    mandatory).

23             In light of the standards set forth above, we decline to award  
24    attorney's fees to PRHTA. We can think of no better way to

Civil No. 04-2324 (JAF)

-4-

1 summarize our reasoning than to quote the court in Greenier:  
2 "Plaintiff's persistent frivolity reflects a zealous advocacy of  
3 his underlying claims rather than bad faith. Indeed, the content  
4 and volume of the filings highlight Plaintiff's questionable  
5 ability to recognize the legal merit of his actions." 245 F. Supp.  
6 at 250.

7 Although we ultimately decided against Plaintiffs and  
8 dismissed their claims, Plaintiffs clearly believed they had new  
9 grounds for suit. Docket Document Nos. 62, 1. PRHTA cites Rivera  
10 Carbana v. Cruz for the proposition that pro-se plaintiffs may not  
11 "use the Court without restraint as an instrument to harass  
12 defendants." 588 F. Supp. 80 (D.P.R. 1984). We do not believe  
13 Plaintiffs intended to harass defendants, but rather sought relief  
14 to which they felt entitled, on grounds which they thought  
15 colorable. We, therefore, deny PRHTA's motion for attorney's fees.

16 **IT IS SO ORDERED.**

17 San Juan, Puerto Rico, this 9<sup>th</sup> day of June, 2005.

18 s/José Antonio Fusté  
19 JOSE ANTONIO FUSTE  
20 Chief U. S. District Judge